

JOHN H. PETERSON

IBLA 93-96

Decided February 17, 1993

Appeal from a decision of the Area Manager, Grass Creek Area, Wyoming, Bureau of Land Management, requiring payment of costs incurred to remove structures erected in trespass. WYW-121786.

Decision set aside; referred for hearing.

1. Administrative Procedure: Hearings--Rules of Practice: Appeals: Hearings--Trespass: Generally

Where the record raises a question of fact regarding whether an individual, charged by BLM under 43 CFR 2920.1-2(a) with the costs of removing structures allegedly placed in trespass on public lands, was responsible for their construction or use, the case will be referred for a hearing on that question.

APPEARANCES: Daniel T. Davis, Esq., Worland, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

John H. Peterson has appealed from a November 13, 1992, decision of the Area Manager, Grass Creek Area, Wyoming, Bureau of Land Management (BLM), requiring him to reimburse BLM \$435.44 for removal of the remainder of corrals and other improvements purportedly constructed and used by him in trespass on less than 1 acre of public land along Grass Creek in lot 3, sec. 24, T. 46 N., R. 99 W., sixth principal meridian, Hot Springs County, Wyoming. Peterson admits on appeal that he lived in the vicinity of the corrals and other improvements involved in the present case at the time of the alleged trespass, since he was then the caretaker of an abandoned State schoolhouse, associated buildings, and the surrounding area near these buildings. Photographs in the record indicate that a path leads from these improvements up a short rise to the old school buildings.

Peterson asserts that he did not construct the corrals or the other improvements and has never kept any horses in them. He states that, so far as he knows, most of the corrals were constructed in the 1960's, long before he came to the area in 1980, and that an addition to the corrals was more recently constructed by Dale Peterson, apparently a relative. John Peterson states that he resided at this location until the summer of 1992 in one of the buildings originally established for administrators and teachers of the school and that the State rented out the other buildings to various tenants, Dale Peterson among them. John Peterson states

that some of these other tenants kept horses in the corrals. These other tenants have, he also asserts, recently left the area as well without leaving forwarding addresses. He concludes: "I believe I have been contacted to pay simply because I am the only former tenant that the BLM could find."

It is undisputed that the corrals and other improvements consisting mainly of a shed were on public land. Nor is there any contention that the corrals and shed were permitted to be on the land by virtue of an authorization from BLM. They therefore constituted an occupancy trespass on public land for which remedies are provided by 43 CFR 2920.1-2(a). In accordance with these regulations, BLM may properly require the removal of or charge the trespasser for the costs of removing the unauthorized structures. See Sharon R. Dayton, 117 IBLA 162, 164 (1990). This is what BLM seeks to do here. There is no assertion that the amount that BLM has assessed is incorrect. There is, however, a question concerning who was responsible for this trespass. This would be so even in the absence of Peterson's pointed disavowal of any responsibility for construction and use of the corrals and other structures.

The corrals and horses were first detected by BLM on February 20, 1991. On that date, Leonard Larsen, a BLM realty specialist, informed "Mrs. Sandy Peterson," apparently John Peterson's wife, by telephone that the corrals and horses were unauthorized and must be removed (Conversation Record, dated Feb. 20, 1991). He stated that she would have 60 days to remove the structures since the ground was still frozen. Mrs. Peterson's response was that she believed the land was owned by Mr. Soderstrom and, apparently when informed that he did not own the land, "indicated she would try to work something out and comply with our request."

Mrs. Peterson did not accept responsibility for construction or use of the corrals. Her statement is consistent with an assertion that the corrals (for the most part) pre-dated her husband's residency in the area and that the corrals were used during his residency by other tenants residing on the nearby school property. BLM again inspected the trespass site on July 13, 1991, confirming that none of the corrals or other improvements had been removed and that there were still horses in that area. Larsen then prepared an "Initial Report of Unauthorized Use," dated August 7, 1991, in which he stated, referring to Mrs. Sandy Peterson and her husband, "they own the horses and have constructed the facilities." No evidence to support this statement appears in the record at this point.

On August 13, 1991, the Area Manager issued a "Notice of Trespass" informing John Peterson that BLM had instituted trespass proceedings against him for unauthorized use of the public lands, citing construction of corrals and other improvements on the land involved here and keeping horses in the corrals. Peterson was given 10 days from receipt of the notice to submit evidence "which tends to show you are not a trespasser as we have alleged." Failure to respond timely, the Area Manager concluded, might result in trespass penalties and civil fines and/or imprisonment. The notice was sent to Peterson and signed for by "Sandie Peterson."

The next item in the record clouds the question of who was responsible for construction and use of the corrals and other improvements. On August 22, 1991, BLM received a phone call from "Dale Peterson," as he was identified in the conversation record of that date. The call was handled by the Area Manager, who reported:

Mr. Peterson had received our trespass notice on the horse corrals [and] shed located on public lands next to the school tract. He claimed that he thought it was on the school property. He wanted to know what he needed to do. I told him to remove all the structures, clean up the area and re-seed some vegetation. He said that he could but it would take awhile. He will try to get it done by Sept. 20. He said that the shed was there before he got there. I said that all I knew was that he was using it and it all needed to be cleaned up. He said that he would work on it.

There is no clear statement by Dale Peterson, as reported by the Area Manager, in which he admits that he constructed the corrals and used them at any time for keeping horses. He did not, however, deny such use in response to a direct assertion to that effect by the Area Manager. The Area Manager followed up his conversation with Dale Peterson with an August 23, 1991, letter to John Peterson, requiring removal of the structures and reclamation by October 15, 1991.

Thereafter, on December 20, 1991, Larsen contacted "Mr. Peterson" (Conversation Record, dated Dec. 20, 1991). Above the reference to Mr. Peterson on the conversation record appears the notation "Dale?" The individual is further identified as the son of the caretaker of the Grass Creek School. Larsen informed Peterson that the corrals and horses were still in trespass and that, if they were not removed by January 1, 1992, BLM would take further legal action, which might include charging rent since February 1991 and charging him for the costs of BLM's removal of the corrals. Peterson is reported to have said that he would do his best to remove the corrals and shed. The record indicates that BLM inspected the trespass site again on April 21, 1992, observing that most of the structures had been removed, along with all of the horses. All that remained was one corral and some debris. On April 23, 1992, the Area Manager left a message with Mrs. Sandie Peterson that the trespass had "gone on too long without getting totally cleaned up" (Conversation Record, dated Apr. 23, 1992). He stated that BLM was on the verge of finishing the clean-up itself and billing the Petersons for the costs thereof and (possibly) back rental. Mrs. Peterson responded that "she would let John know." By letter dated April 24, 1992, the Area Manager notified John Peterson that, since all of the structures had not been removed from the subject land and the land reclaimed, BLM would undertake such work. He stated that Peterson would be held liable for "fair market rental for the past use of the land, administrative costs incurred as a consequence of the trespass, and cost of rehabilitation and stabilization of the lands used in trespass."

On May 14, 1992, Dale Peterson placed a call to the Area Manager, who evidently was not available at that time. The Area Manager returned

the call later in the day, reporting: "A woman answered and said that Dale was not in but she said that they were working on the cleanup of the corral site" (Conversation Record, dated May 14, 1992). BLM personnel thereafter removed the remaining corral and assorted debris and disposed of it on June 9, 1992. By letter dated September 4, 1992, the Area Manager required John Peterson to pay the cost of removal within 30 days of receipt of the letter. This letter was followed by the November 1992 decision in which the Area Manager held him liable for these costs.

[1] The record contains no admission by John Peterson that he was responsible for the trespass involved here. Nor is there any evidence in the record to indicate that he was responsible for constructing any of the structures found on public land or that he used them. Compare with J. W. Weaver, 124 IBLA 29, 32-33 (1992) (timber removal); High Desert Communications, Inc., 123 IBLA 20, 21-22, 25 (1992) (unauthorized occupancy); James E. Billings, 38 IBLA 353, 354, 355 (1978) (unauthorized occupancy). Nevertheless, in spite of the dearth of evidence in the record supporting BLM's charge of trespass against John Peterson, we conclude that the record raises a material question of fact whether Peterson was responsible for the trespass so that BLM was entitled to hold him financially liable for it. The Board has ample authority under 43 CFR 4.415 to order a hearing to resolve a material question of fact. See, e.g., Woods Petroleum Co., 86 IBLA 46, 55 (1985). While BLM has not made a preliminary showing that Peterson committed a trespass, BLM has asserted that he did so and there may be facts not recorded that establish such trespass. Therefore, we refer the case for hearing to resolve the matter.

Accordingly, we must set aside the November 1992 decision of the Area Manager holding Peterson liable as a trespasser for the costs of removing from the subject land what remained of the corrals and other improvements in June 1992. The case is referred to the Hearings Division, Office of Hearings and Appeals, for assignment to an Administrative Law Judge for the purpose of holding a hearing and issuing a decision on the question of Peterson's responsibility for the trespass. Following the hearing, a decision will be made which will be final for the Department in the absence of a proper appeal to the Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is referred to the Hearings Division for further action consistent herewith.

Franklin D. Arness
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

